Bill Analysis

FLORIDA HOUSE OF REPRESENTATIVES

H. Lee Moffitt, Speaker Steve Pajcic, Speaker pro tempore
Committee on Criminal Justice

Elvin L. Martinez
Chairman

Harold W. Spaet
Vice Chairman

HB 360 by Rep. Combee
relating to driving under
the influence while intoxicated

DATE: March 2, 1984

REVISED: April 12, 1984

OTHER COMMITTEES OF REFERENCE:
None

REVISED: _____

SENATE BILL: _____

I. SUMMARY

A. PRESENT SITUATION:

Section 316.193, Florida Statutes, contains the penalty provisions for DUI and DWI cases. For first time offenders, the court must impose the following sentences:

1) A fine of $250 to $500.

2) Imprisonment up to 6 months.

3) Required attendance at substance abuse course and payment of costs incurred.

4) Probation for up to one year.

5) Required participation in public service or a community work project for at least 50 hours.

B. EFFECT OF PROPOSED CHANGES:

The bill would allow the court in its discretion, to permit satisfaction of the fine imposed on a financially indigent defendant through additional public service or community work, calculated to the minimum wage.

For example, an indigent defendant unable to pay a $500 fine could be ordered by the court to perform an additional 149 hours of public or community service.

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II. FISCAL IMPACT

None apparent

III. COMMENTS

There appears to be a current problem in the penalty provisions of the DUI and DWI statutes in sentencing a defendant to pay a fine when he is financially unable to do so. Constitutional problems arise when indigent defendants are ordered to jail for failure to pay fines. Several judges throughout the State have called within the last year seeking assistance on the proper way to proceed with the imposition of fines upon indigent defendants. This bill would provide an alternative method of sentencing in the element of fines. It should be pointed out that the court could initially order the payment of the fine, place the defendant on probation, and then order additional public or community service if he finds the defendant has a continuing inability to pay the fine.

IV. AMENDMENTS

The amendment, adopted originally in subcommittee, eliminates the requirement that additional public service or community work be computed at the federal minimum wage.

The amendment would allow the court to set the value of such work, permitting consideration of variation in the services provided..

Staff Director: J. Thomas Wright

Copy to Sponsor: March 2, 1984

SB 289/HB 465-1984

4SB 239 CS/SB 469

These two Bills are identical and propose to amend Sections 316.193, F.S. and 316.1931, F.S. relating to driving while under the influence of alcoholic beverages, chemical substances or controlled substances and driving an automobile while intoxicated, respectively Violations of this law currently are misdemeanors unless there is a death caused by the operation of a motor vehicle by any person while intoxicated. One addition to the law is proposed which would have a fiscal impact on the Department. Specifically, it would ad the following language to Section 316.1931: "and if great bodily harm, permanent disability, or permanent disfigurement is caused to any other person by the operation of a motor vehicle by any person while so intoxicated, such person is guilty of a felony of the 3rd degree, punishable as provided in s. 775.082 or s. 775.083."

In 1983 there were 21,509 vehicle accidents which involved 21,786 drunk driving violations These violations resulted in 16,200 non-fatal injuries. Of this number, 3,805 of the injuries were serious enough for incapacitation. The remaining injuries are catagorized as "non-incapacitating" or "possible" injuries. Some number of the 3,805 incapacitating injuries would obviously not meet the "great bodily harm", etc., criteria of the law and some number would involve the drivers of the vehicle, thus, would not meet the criteria of law either. Among those numbers of injuries "not incapacitated" or otherwise would be some number who meet the criteria of the law. Assuming more or less an equal stand-off between these two categories of injuries there could be approximately 3,800 violations of the proposed statute annually, for which offenders would be guilty of felonies of the 3rd degree. Of this number, it is likely that the vast majority would be successfuly prosecuted and the offenders sentenced to county jail, community control, probation or state prison. It is estimated that the distribution of the 3,800 offended sentenced would be as follows:

1,022 to county jails
2,004 to probation
672 to state prisons
102 to community control

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Analysis of sentencing guidelines and Departmental data indicates that the Department would likely receive 102 offenders sentenced to community control for an average of 18 months, 2004 offenders sentenced to probation for 12 months and 672 offenders sentenced to state prison who would serve on the average of 9½ months on sentences of 18 months.

It is estimated that the fiscal impact on the Department would be as follows:

Category	1st Year	2nd Year	3rd Year
Community Control Per Diem[1] 102 inmates annually/1½ years.	$ 33,465	$ 112,800	$ 179,821
Probation Per Diem[2] 2,004 intakes annually/1 year	322,905	1,148,392	1,148,392
Prison:			
New Beds[3]	21,427,800	-0-	-0-
Per Diem[4]	1,197,383	3,416,160	3,420,780
TOTAL	$ 22,981,553	$ $ 4,677,352	$ 4,748,993

Footnotes:

[1] $3.22 per diem with phase-in for 1st year. Does not include future cost and population increases.

[2] $1.57 per diem with phase-in for 1st year. Does not include future cost and population increases.

[3] 672 annual admissions with sentences of 18 months would likely serve 9½ months, thus, 426 new beds would be required at a cost of $50,300 each.

[4] $22 per diem with phase-in for 1st year. Does not include future cost and population increases.

Prepared by:
Bureau of Planning, Research & Statistics
March 5, 1984

John Dale
8-235

probably no impact actual
no one knows how many
95% will probably get
probation on 1st
conviction. on 2nd
very few will come
to prison

#0-#22.9.

REVISED: _____ BILL NO. CS/CS/SB 469,698,239, & 380

DATE: May 21, 1984 Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

	ANALYST	STAFF DIRECTOR		REFERENCE	ACTION
1.	Dugger	Liepshutz	1.	JCR	FAV as CS
2.	Gargiulo	Christensen	2.	TR	FAV as CS/CS
3.			3.	JCI	
4.			4.	AP	

SUBJECT:

Driving Under the Influence of Alcohol or Drugs and Related Offenses

BILL NO. AND SPONSOR:

CS/CS/SB 469,698,239,380 by Committees on Transportation & Judiciary Criminal & Sens. Jenne, Weinstein,Langley,Dunn, Rehm,Castor & Fox

I. SUMMARY:

A. Present Situation:

Chapter 316, F.S., the Uniform Traffic Control Law, contains a number of provisions relating to driving a vehicle under the influence of alcohol or drugs: driving under the influence (DUI), driving with an unlawful blood alcohol level (DUBAL), and driving while intoxicated (DWI). In addition, chapter 322, F.S., relating to drivers' licenses, contains provisions that apply to such offenses. Numerically listed below are the major areas and current statutory provisions that are addressed in the bill.

1. Section 316.193 makes it a crime for anyone to drive or be in physical control of a vehicle when he is under the influence of alcohol or drugs, or when his blood alcohol level is .10% or higher. In construing this section, some confusion exists in the courts as to whether it creates two separate offenses (DUI and DUBAL) or whether it creates one offense (DUI), which is provable two different ways (DUI or DUBAL). Also, the Second District Court of Appeal held that a defendant charged with DUI was entitled to a jury trial, but a defendant charged with DWI or DUBAL was not because s. 316.1934(4) specifically provides for a jury trial for DUI, but not for DWI or DUBAL. Caverly v. State, 436 So.2d 191 (Fla. 2nd DCA 1983).

2. In addition to other penalties, s. 316.193 imposes mandatory fines on a person convicted of DUI, DWI, or DUBAL. In practice, many judges as a condition of probation, allow installment payments of these fines if the offender is unable to pay. Community service hours, however, may not be imposed as a condition of probation in lieu of payment of the mandatory fines. State v. Muoio, 438 So.2d 160 (Fla. 2nd DCA 1983).

3. A previous out of state conviction for any alcohol or drug related offense substantially similar to Florida's does not presently constitute a previous conviction for purposes of being counted as a violation of Florida's DUI, DUBAL, or DWI laws.

4. Under s. 316.1931, it is unlawful for any person to drive, be in physical control of a vehicle, or operate a vehicle "over the highways, streets, or thoroughfares of Florida" while intoxicated or under the influence of drugs to the

extent that he is deprived of full possession of his normal faculties (DWI). Currently, this language does not appear to cover parking lots or private property.

5. Section 316.1931 provides that a person who causes property damage or personal injury to another short of death, as a result of driving intoxicated or drugged, is guilty of a first degree misdemeanor. However, the section makes no distinction between bodily injury which is serious and that which is less serious for purposes of punishment. On the other hand, if death occurs as a result of such driving, that person is guilty of manslaughter, a second degree felony.

6. Section 316.193 and s. 316.1931 prohibit DUI and DWI while under the influence of alcohol, controlled substances, or chemical substances, but there is no statutory authority for testing for chemical substances. Furthermore, urine tests do not test for impairment, but rather test for the presence of drugs.

7. Current law provides in s. 316.1932 that only doctors, registered nurses, licensed clinical laboratory technologists or technicians, or certified paramedics, at the request of a law enforcement officer, may withdraw blood to determine the presence of alcohol or drugs. These people are protected from liability if they properly withdraw the blood. Licensed practical nurses are not authorized to do so. A few appellate courts have held the blood tests are inadmissible as evidence if the law enforcement officer did not request such tests to be administered or if the test was administered by a hospital intern. Campbell v. State, 423 So.2d 488 (Fla. 1st DCA 1982), State v. Roose, 9 FLW 623 (Fla. 3rd DCA 1984).

8. Although a person must be arrested before the breath or urine test is administered, the Florida Supreme Court held that no arrest is necessary prior to administering a blood test. State v. Mitchell, 245 So.2d 618 (Fla. 1971).

9. Section 396.112 provides for the confidentiality of records relating to alcohol treatment but it is unclear how far this privilege extends when it concerns release of hospital records in connection with a DUI or DWI violation.

10. According to a traffic court rule, the prosecutor is responsible for completing a traffic citation, but in felony cases, there is no such rule or statute specifying who is responsible for completing such citation.

11. Currently s. 322.271 requires proof of completion of an approved driver's training course for all persons whose license has been suspended, including suspension under the point system, before such persons can be eligible for a "hardship license" (restricted to business use only). A person who has been convicted two or more times of DUI, DUBAL, or DWI is not eligible for a "hardship license" under this provision. Section 322.282 appears to be in conflict with the above provision because it authorizes certain offenders to be eligible for such license if they have had no other DUI, DUBAL, or DWI convictions within the past 10 years.

12. Section 322.28 does not state expressly that permanent revocation of a driver's license will occur upon four convictions of DUI or DWI, but the practical effect of the statute is that it provides for the permanent deprivation

of a license or driving privilege if such convictions occur. Further, the section does not presently address permanent revocation following a conviction for vehicular homicide.

13. There is no statutory authority in s. 322.271, F.S., for the modification of a revocation or suspension of a driving privilege upon the filing of an appeal or upon the rendering of an order that stays the imposition of penalties. Furthermore, the policy of the Department of Highway Safety and Motor Vehicles does not provide for staying the revocation or suspension pending an appeal.

14. A law enforcement officer may not currently make a warrantless arrest for DUI or DWI unless the violation occurs in his presence. Under s. 316.645 an exception exists if the officer makes an investigation at the scene of a traffic accident and based upon his personal investigation, has reasonable and probable grounds to believe the person has committed such offenses.

B. Effect of Proposed Changes:

The proposed changes below are numbered to correspond to the numerical listing under Present Situation above.

1. The bill would clarify that s. 316.193 addresses only the offense of DUI, and not both DUI and DUBAL as two separate offenses, by providing that DUBAL is an element of DUI; therefore, DUI would be one offense which would be provable two different ways, either by proving driving under the influence or by proving an unlawful blood alcohol level (.10% or higher). Also, the bill would make it clear that a person convicted of DUI (which would now include DUBAL as an element) or DWI would be entitled to a jury trial.

2. The bill would amend section 316.193 to allow courts to impose community service hours in lieu of the mandatory fines if the defendant is indigent.

3. A previous out-of-state conviction for any alcohol or drug related offense substantially similar to Florida's would now constitute a previous conviction for purposes of being counted as a violation of Florida's DUI or DWI laws.

4. Section 316.1931 (DWI) is amended to delete the language which makes it unlawful to operate a vehicle "over highways, streets, or thoroughfares of this state" and instead substitute "within this state" to cover areas subject to public traffic, but not currently covered by the existing language.

5. The bill would make it a third degree felony for anyone to cause great bodily harm, permanent disfigurement, or permanent disability to another as a result of driving intoxicated or drugged.

6. The catch-line in s. 316.1932 would be changed to "tests for alcohol, chemical or controlled substances," rather than "tests for impairment or intoxication" in order to cover urine tests, and provide statutory authority for chemical substance testing.

7. Licensed practical nurses would be authorized to withdraw blood to determine the presence of alcohol or drugs. Furthermore, all persons authorized to withdraw blood would not incur any liability unless acting with malicious

purpose, which would be a higher standard than is now presently required. The bill would also provide that the law enforcement officer's failure to request such person to withdraw blood would not affect the admissibility of the test.

8. The bill would clarify the Florida Supreme Court holding in Mitchell with regard to implied consent suspensions by specifying in s. 322.261 that only in the case of a breath or urine test is arrest necessary prior to administering the test.

9. Under the bill, the alcohol treatment record confidentiality provided for in s. 396.112 would not extend to the release of records upon request of the court, the attorneys, or the law enforcement officer in connection with an alleged violation of DUI or DWI.

10. The bill requires that the prosecutor direct the arresting officer to complete the traffic citation in a criminal traffic offense. In the absence of an arresting officer, the prosecutor would be required to prepare the citation himself.

11. Persons whose licenses had been suspended under the point system would be eligible for a "hardship license" upon proof of enrollment, rather than completion, of an approved driver's training course. The bill would also conform s. 322.282 with s. 322.271 (both sections provide conflicting conditions for driver's license reinstatement) by deleting the language which allows a repeat offender to be eligible for a "hardship license" if he has not had any DUI or DWI convictions within the past 10 years.

12. The bill would expressly state that permanent revocation of a driver's license or driving privilege of certain people convicted of DUI or DWI would be required, which is in effect what is presently occurring. Further, permanent revocation would be required if a person is convicted of vehicular homicide and has also been convicted of DUI or DWI.

13. The bill would expressly prohibit the staying of a revocation or suspension of a driving privilege pending an appeal.

14. Finally, the bill would permit a law enforcement officer to make a warrantless arrest for a DUI or DWI violation not committed in his presence if he reasonably believed that one of these violations had been or was being committed.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The public would benefit from the provision allowing community service in lieu of the mandatory fines because if a convicted driver is indigent and therefore cannot pay his fine, the community would at least derive the benefit of the offender's public service work which is unquantifiable.

B. Government:

1. Local Government:

Revenue from the mandatory fines imposed by s. 316.193 accrue to local government fine and forfeiture trust funds.

The fiscal impact of the bill's provision allowing community service from indigent defendants in lieu of the mandatory fines should be minimal since presently such persons are often unable to pay the mandatory fines. However, the potential exists for a greater fiscal impact if judges start imposing community service hours for indigents rather than first attempting to collect the mandatory fines by an installment payment plan as some courts are doimg now.

Based on estimates by the Department of Corrections, the 3rd degree felony offense created by the bill could result in up to an additional 1,022 persons being sentenced to confinement in county correctional facilities. However, the expenditures required to accommodate these additional offenders is not known.

1. State Government:

The Department of Corrections (DOC) has indicated that the fiscal impact of the 3rd degree felony offense created by the bill would range from no impact at all to a maximum of $23 million in the first year ($21.4 million of which would be expended on construction to accommodate 426 new beds in state penitentiaries) and $4.7 million for each of the following two years. The DOC official consulted stated that it is highly probable that about 95% of the offenders under this provision would be sentenced to community control or placed on probation, and that very few offenders would actually serve a prison term.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.

STATEMENT OF SUBSTANTIAL CHANGE CONTAINED IN
COMMITTEE SUBSTITUTE FOR CS/SB 469, 698, 239, & 380

May 21, 1984

Provides that permanent license revocation would be required if a person is convicted of vehicular homicide and has also been convicted of driving under the influence or driving while intoxicated.

Committee on Transportation

~~Chairman~~ or Staff Director

C14(4-74) (File 2 copies with Committee Substitute)

BILL ACTION REPORT

(C3-75: File with Secretary of Senate) CS/(S)~~(H)~~ BILL NO. 469,698,239,380

COMMITTEE ON TRANSPORTATION

DATE May 18, 1984 Date Reported 5/18/84

TIME 9:00 A.M.

PLACE Rm. "C" - Senate Office Bldg.

OTHER COMMITTEE REFERENCES:
(In order shown)

~~1ST COMMITTEE:~~ FAV/CS BY JUDICIARY-CRIMINAL

GOES TO: JUDICIARY-CIVIL

APPROPRIATIONS

FINAL ACTION:

_____ Favorably with _____ amendments

X Favorably with Committee Substitute to CS/SB 469,698,239 and 380

_____ Unfavorably

OTHER: _____ Temporarily Passed

_____ Reconsidered

_____ Not Considered

THE VOTE WAS:

CS for CS/SB's 469, 698,239,& 380 FINAL BILL VOTE

Aye	Nay	SENATORS	No.1 P.3,ln 22 P.20,ln 5		No.2 P.3,ln 24		No.3 P.21,lns.24-25		No.4 P.23,ln 8		No.5 P.24,ln 10	
			Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
x		Tim Deratany										
x		Arnett E. Girardeau										
x		Jeanne Malchon										
x		William G. Myers										
x		Gerald S. Rehm										
x		Lawrence H.Plummer,V-Ch.										
x		Malcolm E. Beard, Chm.										
7 Aye	0 Nay	TOTAL	7* Aye	0 Nay	7* Aye	0 Nay	7* Aye	0 Nay	7* Aye	0 Nay	7* Aye	0 Nay

*VOTE WAS WITHOUT OBJECTION

Wayne Evans, DESW

(Attach additional page if necessary)

Please Complete:
The key sponsor appeared ( )
A Senator appeared ( )
Sponsor's aide appeared ( )
Other appearance ( )

(C3a-75 le with Secretary of Senate)

CS/SB's 469,698,239 & 380
XSXCXBXXBXXXXXXXX.

BILL ACTION REPORT (Continued)

(To be used for additional amendments and motions)

COMMITTEE ON TRANSPORTATION May 18, 1984 9:00 a.m.

The Vote Was:

SENATORS	No.6 P.24,lns.20-21		No.7 Title P.1,ln.7		Malchon Motion to adopt as CS to CS/SBs 469, etc.							
	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
Tim Deratany												
Arnett E. Girardeau												
Jeanne Malchon												
William G. Myers												
Gerald S. Rehm												
Lawrence H.Plummer,V-Ch.												
Malcolm E. Beard, Chm.												
TOTAL	7*	0	7*	0	7*	0						
	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay

*VOTE WAS WITHOUT ORJECTION

M E M O R A N D U M

Date 4-30-84

TO: Senator Malcolm E. Beard, Chairman
Senate Transportation Committee
30 Senate Office Building
Tallahassee, Florida 32301

FROM: W. R. KAUFMAN, Director
Administrative Services
Department of Highway Safety
and Motor Vehicles
Neil Kirkman Building
Tallahassee, Florida 32301

Following is the information requested CS/SBs 469, 698, 239 &380, HB _____:

FISCAL IMPACT

1. Agency requirements to administer the bill provisions for each of next three years, to include personnel and financial, and source of funds:

None.

2. Amount and disposition of any anticipated revenue Collections for each of next three years:

None.

3. Amount and origin of any anticipated Revenue Reductions for each of next three years.

None.

OTHER COMMENTS OR SUGGESTIONS CONCERNING THE BILL: None.

Prepared by: William C. Snuggs

Telephone: 488-3542

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APR 30 1984
SENATE TRANSPORTATION
COMMITTEE

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Dugger	Liepshutz	1. JCR	FAV/CS
2.		2. TR	
3.		3. AP	

SUBJECT:

Highway Safety

BILL NO. AND SPONSOR:

CS/SB 469, 698, 239, 380 by Senators Jenne, Weinstein, Langley, Dunn, Rehm, Castor and Fox

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I. SUMMARY:

A. Present Situation:

Chapter 316, Florida Statutes, which provides for highway safety, contains provisions relating to driving a vehicle under the influence of alcohol or drugs: driving under the influence (DUI), driving with an unlawful blood alcohol level (DUBAL), and driving while intoxicated (DWI). Several of these provisions will be discussed as follows:

Section 316.193 makes it a crime for anyone to drive or be in physical control of a vehicle when he is under the influence of alcohol or drugs, or when his blood alcohol level is .10% or higher. In construing this section, some confusion exists in the courts as to whether it creates two separate offenses (DUI and DUBAL) or whether it creates one offense (DUI), which is provable two different ways (DUI or DUBAL). Also, the Second District Court of Appeal held that a defendant charged with DUI was entitled to a jury trial, but a defendant charged with DWI or DUBAL was not because s. 316.1934(4) specifically provides for a jury trial for DUI, but not for DWI or DUBAL. Caverly v. State, 436 So.2d 191 (Fla. 2nd DCA 1983).

Section 316.193 imposes mandatory fines, in addition to other penalties, on a person convicted of drunk driving (DUI, DWI, or DUBAL). In practice, many judges as a condition of probation, allow installment payments of these fines if the offender is unable to pay. Community service hours, however, can not be imposed as a condition of probation in lieu of payment of the mandatory fines. State v. Muoio, 438 So.2d 160 (Fla. 2nd DCA 1983).

A previous out of state conviction for any alcohol or drug related offense substantially similar to Florida's does not presently constitute a previous conviction for purposes of being counted as a violation of Florida's DUI, DUBAL, or DWI laws.

It is unlawful for any person to drive, be in physical control of a vehicle, or operate a vehicle "over the highways, streets, or thoroughfares of Florida" while intoxicated or under the influence of drugs to the extent that he is deprived of full possession of his normal faculties (DWI). Currently, this language does not appear to cover parking lots or private property.

A person who causes property damage or personal injury to another short of death, as a result of driving intoxicated or drugged, is guilty of a first degree misdemeanor. However,

section 316.1931 makes no distinction between bodily injury which is serious and that which is less serious for purposes of punishment. On the other hand, if death occurs as a result of such driving, that person is guilty of manslaughter, a second degree felony.

Section 316.193 and s. 316.1931 prohibit DUI and DWI while under the influence of alcohol, controlled substances, or chemical substances, but there is no statutory authority for testing for chemical substances. Furthermore, urine tests do not test for impairment, but rather test for the presence of drugs.

Only doctors, registered nurses, licensed clinical laboratory technologists or technicians, or certified paramedics, at the request of a law enforcement officer, may withdraw blood to determine the presence of alcohol or drugs. These people are protected from liability if they properly withdraw the blood. Licensed practical nurses are not authorized to do so. A few appellate courts have held the blood tests are inadmissible as evidence if the law enforcement officer did not request such tests to be administered or if the test was administered by a hospital intern. Campbell v. State, 423 So.2d 488 (Fla. 1st DCA 1982), State v. Roose, 9 FLW 623 (Fla. 3rd DCA 1984). Although a person must be arrested before the breath or urine test is administered, the Florida Supreme Court held that no arrest is necessary prior to administering a blood test. State v. Mitchell, 245 So.2d 618 (Fla. 1971).

Section 396.112 provides for the confidentiality of records relating to alcohol treatment but it is unclear how far this privilege extends when it concerns release of hospital records in connection with a DUI or DWI violation.

According to a traffic court rule, the prosecutor is responsible for completing a traffic citation, but in felony cases, there is no such rule or statute providing who is responsible for completing such citation.

Currently s. 322.271 requires proof of completion of an approved driver's training course for all persons whose license has been suspended, including suspension under the point system, before such persons can be eligible for a "hardship license" (restricted to business use only). A person who has been convicted two or more times of DUI, DUBAL, or DWI is not eligible for a "hardship license" under this provision. Section 322.282 appears to be in conflict with the above provision because it authorizes certain offenders to be eligible for such license if they have had no other DUI, DUBAL, or DWI convictions within the past 10 years.

Section 322.28 does not state expressly that permanent revocation of a driver's license will occur upon four convictions of DUI or DWI, but the practical effect of the statute is that it provides for the permanent deprivation of a license or driving privilege if such convictions occur.

There is no statutory authority for the modification of a revocation or suspension of a driving privilege upon the filing of an appeal or upon the rendering of an order that stays the imposition of penalties. Furthermore, the policy of the Department of Highway Safety and Motor Vehicles (HSMV) does not provide for staying the revocation or suspension pending an appeal.

A law enforcement officer may not currently make a warrantless arrest for DUI or DWI unless the violation occurs in his presence. An exception exists if that officer makes an

investigation at the scene of a traffic accident and based upon his personal investigation, the officer has reasonable and probable grounds to believe the person has committed such offenses.

B. Effect of Proposed Changes:

CS/SB 469, 698, 239, and 380 would revise various provisions relating to DUI and DWI, with major changes occurring as follows:

1. The bill would clarify that s. 316.193 speaks only to the offense of DUI, and not to both DUI and DUBAL as two separate offenses, by providing that DUBAL is an element of DUI; therefore, DUI would be one offense which would be provable two different ways, either by proving driving under the influence or by proving an unlawful blood alcohol level (.10% or higher). Also, the bill would make it clear that a person convicted of DUI (which would now include DUBAL as an element) or DWI would be entitled to a jury trial.

2. A previous out of state conviction for any alcohol or drug related offense substantially similar to Florida's would now constitute a previous conviction for purposes of being counted as a violation of Florida's DUI or DWI laws.

3. It would change the current drunk driving law by allowing judges to impose community service hours in lieu of the mandatory fines if the defendant was indigent.

4. The current language in the DWI section which makes it unlawful to operate a vehicle "over highways, streets, or thoroughfares" of Florida would be changed to "within" to cover areas subject to public traffic, but not currently covered by the existing language.

5. The bill would make it a third degree felony for anyone to cause great bodily harm, permanent disfigurement, or permanent disability to another as a result of driving intoxicated or drugged.

6. The catch-line in s. 316.1932 would be changed to "tests for alcohol, chemical or controlled substances," rather than "tests for impairment or intoxication" which would now cover urine tests, as well as providing the statutory authority for chemical substance testing.

7. Licensed practical nurses would be authorized to withdraw blood to determine the presence of alcohol or drugs. Furthermore, all persons authorized to withdraw blood would not incur any liability unless acting with malicious purpose, which would be a higher standard than is now presently required. The bill would also provide that the law enforcement officer's failure to request such person to withdraw blood would not affect the admissibility of the test. Finally, the bill would clarify the Florida Supreme Court holding in Mitchell with regard to implied consent suspensions by specifying that only in the case of a breath or urine test was arrest necessary prior to administering the test.

8. The alcohol treatment record confidentiality in s. 396.112 would not extend to the release of records upon request of the court, the attorneys, or the law enforcement officer in connection with an alleged violation of DUI or DWI.

9. The bill would now provide that the prosecutor direct the arresting officer, or himself if there is no such officer, to complete the traffic citation in a criminal traffic offense.

10. Persons whose licenses had been suspended under the point system would be eligible for a "hardship license" upon proof of enrollment, rather than completion, of an approved driver's training course. The bill would also conform s. 322.282 with s. 322.271 (both sections provide conflicting conditions for driver's license reinstatement) by deleting the language which allows a repeat offender to be eligible for a "hardship license" if he has not had any DUI or DWI convictions within the past 10 years.

11. The bill would expressly state that permanent revocation of a driver's license or driving privilege of certain people convicted of DUI or DWI would now be possible, which is in effect what is occurring currently.

12. The bill would expressly prohibit the staying of a revocation or suspension of a driving privilege pending an appeal.

13. Finally, the bill would permit a law enforcement officer to make a warrantless arrest for a DUI or DWI violation not committed in his presence if he reasonably believed that one of these violations had been or was being committed.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The public at large would be benefited by the provision allowing community service in lieu of the mandatory fines because if a drunk driver is indigent and therefore can not pay his fine, rather than getting nothing from the offender, the community would at least be getting the benefit of the offender's public service work which is unquantifiable.

B. Government:

It would appear that the fiscal impact of the bill's provision allowing community service in lieu of the mandatory fines will be minimal. Since the bill would change current practice only as it relates to community service hours in lieu of mandatory drunk driving fines for the indigent offender, it would seem that the fiscal impact on the counties' fine and forfeiture trust funds would be minimal since the indigent offenders are not currently able to pay these mandatory fines. However, the potential exists for a greater fiscal impact if judges start imposing community service hours for indigents rather than first attempting to collect the mandatory drunk driving fines by an installment payment plan which some courts are using now.

There appears to be a significant fiscal impact because of the provision creating a third degree felony offense for causing serious injury while DWI. Based on the number of vehicular accidents involving drunk driving violations which caused serious injuries in 1983, the Department of Corrections estimates that there could be approximately 3,800 violations of the newly created third degree felony offense annually. The Department feels it would receive about 102 offenders sentenced to community control for about 18 months, 2,004 offenders sentenced to probation for 12 months, and 672 offenders sentenced to state prison who would serve about half of an 18 month sentence. Therefore, the Department estimates that the total fiscal impact for the first year would be about

$22,981,553 and about $4,700,000 for the second and third years.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR SENATE BILLS 469, 698, 239, 380

1. Allows judges to impose community service hours in lieu of the mandatory DUI and DWI fines if the defendant is indigent.

2. Makes it a third degree felony for anyone to cause great bodily harm, permanent disfigurement, or permanent disability to another as a result of driving while intoxicated or drugged.

3. A previous out of state conviction for any alcohol or drug related offense substantially similar to Florida's will now constitute a previous conviction for purposes of being counted as a violation of Florida's DWI laws, as well as the DUI laws.

4. Persons whose licenses have been suspended under the point system will be eligible for a hardship license upon proof of enrollment, rather than completion, of an approved driver's training course.

5. Conforms conflicting sections providing conditions for driver's license reinstatement by deleting language which allows a repeat offender to be eligible for a hardship license if he has not had any DUI or DWI convictions within the past 10 years.

6. Makes it clear that a person convicted of DUI or DWI will be entitled to a jury trial.

7. Permits a law enforcement officer to make a warrantless arrest for a DUI or DWI violation not committed in his presence if he reasonably believes that one of these violations has been or is being committed.

Committee on Judiciary-Criminal

M. Paul Stephens
Staff Director

(Supplemental 7/10/84)

REVISED: _____ BILL NO. CS/SB 469, 698, 239, 380

DATE: May 16, 1984 Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

	ANALYST	STAFF DIRECTOR		REFERENCE	ACTION
1.	Dugger	Liepshutz	1.	JCR	FAV/CS
2.	Gargiulo	Christensen	2.	TR	
3.			3.	JCI	
4.			4.	AP	

SUBJECT:

Driving Under the Influence of Alcohol or Drugs and Related Offenses

BILL NO. AND SPONSOR:

CS/SB 469, 698, 239, 380 by Committee on Judiciary Criminal and Senators Jenne, Weinstein, Langley, Dunn, Rehm, Castor & Fox

I. SUMMARY:

A. Present Situation:

Chapter 316, F.S., the Uniform Traffic Control Law, contains a number of provisions relating to driving a vehicle under the influence of alcohol or drugs: driving under the influence (DUI), driving with an unlawful blood alcohol level (DUBAL), and driving while intoxicated (DWI). In addition, chapter 322, F.S., relating to drivers' licenses, contains provisions that apply to such offenses. Numerically listed below are the major areas and current statutory provisions that are addressed in the bill.

1. Section 316.193 makes it a crime for anyone to drive or be in physical control of a vehicle when he is under the influence of alcohol or drugs, or when his blood alcohol level is .10% or higher. In construing this section, some confusion exists in the courts as to whether it creates two separate offenses (DUI and DUBAL) or whether it creates one offense (DUI), which is provable two different ways (DUI or DUBAL). Also, the Second District Court of Appeal held that a defendant charged with DUI was entitled to a jury trial, but a defendant charged with DWI or DUBAL was not because s. 316.1934(4) specifically provides for a jury trial for DUI, but not for DWI or DUBAL. Caverly v. State, 436 So.2d 191 (Fla. 2nd DCA 1983).

2. In addition to other penalties, s. 316.193 imposes mandatory fines on a person convicted of DUI, DWI, or DUBAL. In practice, many judges as a condition of probation, allow installment payments of these fines if the offender is unable to pay. Community service hours, however, may not be imposed as a condition of probation in lieu of payment of the mandatory fines. State v. Muoio, 438 So.2d 160 (Fla. 2nd DCA 1983).

3. A previous out of state conviction for any alcohol or drug related offense substantially similar to Florida's does not presently constitute a previous conviction for purposes of being counted as a violation of Florida's DUI, DUBAL, or DWI laws.

4. Under s. 316.1931, it is unlawful for any person to drive, be in physical control of a vehicle, or operate a vehicle "over the highways, streets, or thoroughfares of Florida" while intoxicated or under the influence of drugs to the extent that he is deprived of full possession of his normal

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faculties (DWI). Currently, this language does not appear to cover parking lots or private property.

5. Section 316.1931 provides that a person who causes property damage or personal injury to another short of death, as a result of driving intoxicated or drugged, is guilty of a first degree misdemeanor. However, the section makes no distinction between bodily injury which is serious and that which is less serious for purposes of punishment. On the other hand, if death occurs as a result of such driving, that person is guilty of manslaughter, a second degree felony.

6. Section 316.193 and s. 316.1931 prohibit DUI and DWI while under the influence of alcohol, controlled substances, or chemical substances, but there is no statutory authority for testing for chemical substances. Furthermore, urine tests do not test for impairment, but rather test for the presence of drugs.

7. Current law provides in s. 316.1932 that only doctors, registered nurses, licensed clinical laboratory technologists or technicians, or certified paramedics, at the request of a law enforcement officer, may withdraw blood to determine the presence of alcohol or drugs. These people are protected from liability if they properly withdraw the blood. Licensed practical nurses are not authorized to do so. A few appellate courts have held the blood tests are inadmissible as evidence if the law enforcement officer did not request such tests to be administered or if the test was administered by a hospital intern. Campbell v. State, 423 So.2d 488 (Fla. 1st DCA 1982), State v. Roose, 9 FLW 623 (Fla. 3rd DCA 1984).

8. Although a person must be arrested before the breath or urine test is administered, the Florida Supreme Court held that no arrest is necessary prior to administering a blood test. State v. Mitchell, 245 So.2d 618 (Fla. 1971).

9. Section 396.112 provides for the confidentiality of records relating to alcohol treatment but it is unclear how far this privilege extends when it concerns release of hospital records in connection with a DUI or DWI violation.

10. According to a traffic court rule, the prosecutor is responsible for completing a traffic citation, but in felony cases, there is no such rule or statute specifying who is responsible for completing such citation.

11. Currently s. 322.271 requires proof of completion of an approved driver's training course for all persons whose license has been suspended, including suspension under the point system, before such persons can be eligible for a "hardship license" (restricted to business use only). A person who has been convicted two or more times of DUI, DUBAL, or DWI is not eligible for a "hardship license" under this provision. Section 322.282 appears to be in conflict with the above provision because it authorizes certain offenders to be eligible for such license if they have had no other DUI, DUBAL, or DWI convictions within the past 10 years.

12. Section 322.28 does not state expressly that permanent revocation of a driver's license will occur upon four convictions of DUI or DWI, but the practical effect of the statute is that it provides for the permanent deprivation of a license or driving privilege if such convictions occur.

13. There is no statutory authority in s. 322.271, F.S., for the modification of a revocation or suspension of a driving privilege upon the filing of an appeal or upon the rendering of an order that stays the imposition of penalties. Furthermore, the policy of the Department of Highway Safety and Motor Vehicles does not provide for staying the revocation or suspension pending an appeal.

14. A law enforcement officer may not currently make a warrantless arrest for DUI or DWI unless the violation occurs in his presence. Under s. 316.645 an exception exists if the officer makes an investigation at the scene of a traffic accident and based upon his personal investigation, has reasonable and probable grounds to believe the person has committed such offenses.

B. Effect of Proposed Changes:

The proposed changes below are numbered to correspond to the numerical listing under Present Situation above.

1. The bill would clarify that s. 316.193 addresses only the offense of DUI, and not both DUI and DUBAL as two separate offenses, by providing that DUBAL is an element of DUI; therefore, DUI would be one offense which would be provable two different ways, either by proving driving under the influence or by proving an unlawful blood alcohol level (.10% or higher). Also, the bill would make it clear that a person convicted of DUI (which would now include DUBAL as an element) or DWI would be entitled to a jury trial.

2. The bill would amend section 316.193 to allow courts to impose community service hours in lieu of the mandatory fines if the defendant is indigent.

3. A previous out-of-state conviction for any alcohol or drug related offense substantially similar to Florida's would now constitute a previous conviction for purposes of being counted as a violation of Florida's DUI or DWI laws.

4. Section 316.1931 (DWI) is amended to delete the language which makes it unlawful to operate a vehicle "over highways, streets, or thoroughfares of this state" and instead substitute "within this state" to cover areas subject to public traffic, but not currently covered by the existing language.

5. The bill would make it a third degree felony for anyone to cause great bodily harm, permanent disfigurement, or permanent disability to another as a result of driving intoxicated or drugged.

6. The catch-line in s. 316.1932 would be changed to "tests for alcohol, chemical or controlled substances," rather than "tests for impairment or intoxication" in order to cover urine tests, and provide statutory authority for chemical substance testing.

7. Licensed practical nurses would be authorized to withdraw blood to determine the presence of alcohol or drugs. Furthermore, all persons authorized to withdraw blood would not incur any liability unless acting with malicious purpose, which would be a higher standard than is now presently required. The bill would also provide that the law enforcement officer's failure to request such person to withdraw blood would not affect the admissibility of the test.

8. The bill would clarify the Florida Supreme Court holding in Mitchell with regard to implied consent suspensions by specifying in s. 322.261 that only in the case of a breath or urine test is arrest necessary prior to administering the test.

9. Under the bill, the alcohol treatment record confidentiality provided for in s. 396.112 would not extend to the release of records upon request of the court, the attorneys, or the law enforcement officer in connection with an alleged violation of DUI or DWI.

10. The bill requires that the prosecutor direct the arresting officer to complete the traffic citation in a criminal traffic offense. In the absence of an arresting officer, the prosecutor would be required to prepare the citation himself.

11. Persons whose licenses had been suspended under the point system would be eligible for a "hardship license" upon proof of enrollment, rather than completion, of an approved driver's training course. The bill would also conform s. 322.282 with s. 322.271 (both sections provide conflicting conditions for driver's license reinstatement) by deleting the language which allows a repeat offender to be eligible for a "hardship license" if he has not had any DUI or DWI convictions within the past 10 years.

12. The bill would expressly state that permanent revocation of a driver's license or driving privilege of certain people convicted of DUI or DWI would be required, which is in effect what is presently occurring.

13. The bill would expressly prohibit the staying of a revocation or suspension of a driving privilege pending an appeal.

14. Finally, the bill would permit a law enforcement officer to make a warrantless arrest for a DUI or DWI violation not committed in his presence if he reasonably believed that one of these violations had been or was being committed.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The public would benefit from the provision allowing community service in lieu of the mandatory fines because if a convicted driver is indigent and therefore can not pay his fine, the community would at least derive the benefit of the offender's public service work which is unquantifiable.

B. Government:

1. Local Government:

Revenue from the mandatory fines imposed by s. 316.193 accrue to local government fine and forfeiture trust funds. The fiscal impact of the bill's provision allowing community service from indigent defendants in lieu of the mandatory fines should be minimal since presently such persons are often unable to pay the mandatory fines. However, the potential exists for a greater fiscal impact if judges start imposing community service hours for indigents rather than first attempting to collect the mandatory fines by an installment payment plan as some courts are doing now.

Based on estimates by the Department of Corrections, the 3rd degree felony offense created by the bill could result in up to an additional 1,022 persons being sentenced to confinement in county correctional facilities. However, the expenditures required to accommodate these additional offenders is not known.

1. State Government:

The Department of Corrections (DOC) has indicated that the fiscal impact of the 3rd degree felony offense created by the bill would range from no impact at all to a maximum of $23 million in the first year ($21.4 million of which would be expended on construction to accommodate 426 new beds in state penitentiaries) and $4.7 million for each of the following two years. The DOC official consulted stated that it is highly probable that about 95% of the offenders under this provision would be sentenced to community control or placed on probation, and that very few offenders would actually serve a prison term.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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NOTE: This analysis reflects the nature of the bill as it left the Committee on Judiciary-Criminal. Any further changes to the bill are not included in this analysis. See the"Comments" section for the final procedural action taken by the Legislature.

****

	ANALYST	STAFF DIRECTOR		REFERENCE	ACTION
1.	Dugger D.P.	Liepshutz	1.	JCR	FAV/CS
2.			2.	TR	
3.			3.	AP	

SUBJECT:

Highway Safety

BILL NO. AND SPONSOR:

CS/SB 469, 698, 239, 380 by Senators Jenne, Weinstein, Langley, Dunn, Rehm, Castor and Fox

I. SUMMARY:

A. Present Situation:

Chapter 316, Florida Statutes, which provides for highway safety, contains provisions relating to driving a vehicle under the influence of alcohol or drugs: driving under the influence (DUI), driving with an unlawful blood alcohol level (DUBAL), and driving while intoxicated (DWI). Several of these provisions will be discussed as follows:

Section 316.193 makes it a crime for anyone to drive or be in physical control of a vehicle when he is under the influence of alcohol or drugs, or when his blood alcohol level is .10% or higher. In construing this section, some confusion exists in the courts as to whether it creates two separate offenses (DUI and DUBAL) or whether it creates one offense (DUI), which is provable two different ways (DUI or DUBAL). Also, the Second District Court of Appeal held that a defendant charged with DUI was entitled to a jury trial, but a defendant charged with DWI or DUBAL was not because s. 316.1934(4) specifically provides for a jury trial for DUI, but not for DWI or DUBAL. Caverly v. State, 436 So.2d 191 (Fla. 2nd DCA 1983).

Section 316.193 imposes mandatory fines, in addition to other penalties, on a person convicted of drunk driving (DUI, DWI, or DUBAL). In practice, many judges as a condition of probation, allow installment payments of these fines if the offender is unable to pay. Community service hours, however, can not be imposed as a condition of probation in lieu of payment of the mandatory fines. State v. Muoio, 438 So.2d 160 (Fla. 2nd DCA 1983).

A previous out of state conviction for any alcohol or drug related offense substantially similar to Florida's does not

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presently constitute a previous conviction for purposes of being counted as a violation of Florida's DUI, DUBAL, or DWI laws.

It is unlawful for any person to drive, be in physical control of a vehicle, or operate a vehicle "over the highways, streets, or thoroughfares of Florida" while intoxicated or under the influence of drugs to the extent that he is deprived of full possession of his normal faculties (DWI). Currently, this language does not appear to cover parking lots or private property.

A person who causes property damage or personal injury to another short of death, as a result of driving intoxicated or drugged, is guilty of a first degree misdemeanor. However, section 316.1931 makes no distinction between bodily injury which is serious and that which is less serious for purposes of punishment. On the other hand, if death occurs as a result of such driving, that person is guilty of manslaughter, a second degree felony.

Section 316.193 and s. 316.1931 prohibit DUI and DWI while under the influence of alcohol, controlled substances, or chemical substances, but there is no statutory authority for testing for chemical substances. Furthermore, urine tests do not test for impairment, but rather test for the presence of drugs.

Only doctors, registered nurses, licensed clinical laboratory technologists or technicians, or certified paramedics, at the request of a law enforcement officer, may withdraw blood to determine the presence of alcohol or drugs. These people are protected from liability if they properly withdraw the blood. Licensed practical nurses are not authorized to do so. A few appellate courts have held the blood tests are inadmissible as evidence if the law enforcement officer did not request such tests to be administered or if the test was administered by a hospital intern. Campbell v. State, 423 So.2d 488 (Fla. 1st DCA 1982), State v. Roose, 9 FLW 623 (Fla. 3rd DCA 1984). Although a person must be arrested before the breath or urine test is administered, the Florida Supreme Court held that no arrest is necessary prior to administering a blood test. State v. Mitchell, 245 So.2d 618 (Fla. 1971).

Section 396.112 provides for the confidentiality of records relating to alcohol treatment but it is unclear how far this privilege extends when it concerns release of hospital records in connection with a DUI or DWI violation.

According to a traffic court rule, the prosecutor is responsible for completing a traffic citation, but in felony cases, there is no such rule or statute providing who is responsible for completing such citation.

Currently s. 322.271 requires proof of completion of an approved driver's training course for all persons whose license has been suspended, including suspension under the point system, before such persons can be eligible for a "hardship license" (restricted to business use only). A person who has been convicted two or more times of DUI, DUBAL, or DWI is not eligible for a "hardship license" under this provision. Section 322.282 appears to be in conflict with the above provision because it authorizes certain offenders to be eligible for such license if they have had no other DUI, DUBAL, or DWI convictions within the past 10 years.

Section 322.28 does not state expressly that permanent revocation of a driver's license will occur upon four convictions of DUI or DWI, but the practical effect of the statute is that it provides for the permanent deprivation of a license or driving privilege if such convictions occur.

There is no statutory authority for the modification of a revocation or suspension of a driving privilege upon the filing of an appeal or upon the rendering of an order that stays the imposition of penalties. Furthermore, the policy of the Department of Highway Safety and Motor Vehicles (HSMV) does not provide for staying the revocation or suspension pending an appeal.

A law enforcement officer may not currently make a warrantless arrest for DUI or DWI unless the violation occurs in his presence. An exception exists if that officer makes an investigation at the scene of a traffic accident and based upon his personal investigation, the officer has reasonable and probable grounds to believe the person has committed such offenses.

B. Effect of Proposed Changes:

CS/SB 469, 698, 239, and 380 would revise various provisions relating to DUI and DWI, with major changes occurring as follows:

1. The bill would clarify that s. 316.193 speaks only to the offense of DUI, and not to both DUI and DUBAL as two separate offenses, by providing that DUBAL is an element of DUI; therefore, DUI would be one offense which would be provable two different ways, either by proving driving under the influence or by proving an unlawful blood alcohol level (.10% or higher). Also, the bill would make it clear that a person convicted of DUI (which would now include DUBAL as an element) or DWI would be entitled to a jury trial.

2. A previous out of state conviction for any alcohol or drug related offense substantially similar to Florida's would now constitute a previous conviction for purposes of being counted as a violation of Florida's DUI or DWI laws.

3. It would change the current drunk driving law by allowing judges to impose community service hours in lieu of the mandatory fines if the defendant was indigent.

4. The current language in the DWI section which makes it unlawful to operate a vehicle "over highways, streets, or thoroughfares" of Florida would be changed to "within" to cover areas subject to public traffic, but not currently covered by the existing language.

5. The bill would make it a third degree felony for anyone to cause great bodily harm, permanent disfigurement, or permanent disability to another as a result of driving intoxicated or drugged.

6. The catch-line in s. 316.1932 would be changed to "tests for alcohol, chemical or controlled substances," rather than "tests for impairment or intoxication" which would now cover urine tests, as well as providing the statutory authority for chemical substance testing.

7. Licensed practical nurses would be authorized to withdraw blood to determine the presence of alcohol or drugs. Furthermore, all persons authorized to withdraw blood would not incur any liability unless acting with malicious purpose, which would be a higher standard than is now presently required. The bill would also provide that the law enforcement officer's failure to request such person to withdraw blood would not affect the admissibility of the test. Finally, the bill would clarify the Florida Supreme Court holding in Mitchell with regard to implied consent suspensions by specifying that only in the case of a breath or urine test was arrest necessary prior to administering the test.

8. The alcohol treatment record confidentiality in s. 396.112 would not extend to the release of records upon request of the court, the attorneys, or the law enforcement officer in connection with an alleged violation of DUI or DWI.

9. The bill would now provide that the prosecutor direct the arresting officer, or himself if there is no such officer, to complete the traffic citation in a criminal traffic offense.

10. Persons whose licenses had been suspended under the point system would be eligible for a "hardship license" upon proof of enrollment, rather than completion, of an approved driver's training course. The bill would also conform s. 322.282 with s. 322.271 (both sections provide conflicting conditions for driver's license reinstatement) by deleting the language which allows a repeat offender to be eligible for a "hardship license" if he has not had any DUI or DWI convictions within the past 10 years.

11. The bill would expressly state that permanent revocation of a driver's license or driving privilege of certain people convicted of DUI or DWI would now be possible, which is in effect what is occurring currently.

12. The bill would expressly prohibit the staying of a revocation or suspension of a driving privilege pending an appeal.

13. Finally, the bill would permit a law enforcement officer to make a warrantless arrest for a DUI or DWI violation not committed in his presence if he reasonably believed that one of these violations had been or was being committed.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The public at large would be benefited by the provision allowing community service in lieu of the mandatory fines because if a drunk driver is indigent and therefore can not pay his fine, rather than getting nothing from the offender, the community would at least be getting the benefit of the offender's public service work which is unquantifiable.

B. Government:

It would appear that the fiscal impact of the bill's provision allowing community service in lieu of the mandatory fines will be minimal. Since the bill would change current practice only as it relates to community service hours in lieu of mandatory drunk driving fines for the indigent offender, it would seem

that the fiscal impact on the counties' fine and forfeiture trust funds would be minimal since the indigent offenders are not currently able to pay these mandatory fines. However, the potential exists for a greater fiscal impact if judges start imposing community service hours for indigents rather than first attempting to collect the mandatory drunk driving fines by an installment payment plan which some courts are using now.

There appears to be a significant fiscal impact because of the provision creating a third degree felony offense for causing serious injury while DWI. Based on the number of vehicular accidents involving drunk driving violations which caused serious injuries in 1983, the Department of Corrections estimates that there could be approximately 3,800 violations of the newly created third degree felony offense annually. The Department feels it would receive about 102 offenders sentenced to community control for about 18 months, 2,004 offenders sentenced to probation for 12 months, and 672 offenders sentenced to state prison who would serve about half of an 18 month sentence. Therefore, the Department estimates that the total fiscal impact for the first year would be about $22,981,553 and about $4,700,000 for the second and third years.

III. COMMENTS:

Final Update: On June 1, 1984, HB 360 was substituted for CS/CS/SB 469, 698, 239, and 380. HB 360 became law on June 29, 1984. Chapter 84-359, Laws of Florida.

IV. AMENDMENTS:

None.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR SENATE BILLS 469, 698, 239, 380

1. Allows judges to impose community service hours in lieu of the mandatory DUI and DWI fines if the defendant is indigent.

2. Makes it a third degree felony for anyone to cause great bodily harm, permanent disfigurement, or permanent disability to another as a result of driving while intoxicated or drugged.

3. A previous out of state conviction for any alcohol or drug related offense substantially similar to Florida's will now constitute a previous conviction for purposes of being counted as a violation of Florida's DWI laws, as well as the DUI laws.

4. Persons whose licenses have been suspended under the point system will be eligible for a hardship license upon proof of enrollment, rather than completion, of an approved driver's training course.

5. Conforms conflicting sections providing conditions for driver's license reinstatement by deleting language which allows a repeat offender to be eligible for a hardship license if he has not had any DUI or DWI convictions within the past 10 years.

6. Makes it clear that a person convicted of DUI or DWI will be entitled to a jury trial.

7. Permits a law enforcement officer to make a warrantless arrest for a DUI or DWI violation not committed in his presence if he reasonably believes that one of these violations has been or is being committed.

Committee on Judiciary-Criminal

M. Paul Stephens
Staff Director

BILL ACTION REPORT

(C3-75: File with Secretary of Senate) (S)(H) BILL NO. SB 469

COMMITTEE ON Judiciary-Criminal

DATE April 17, 1984 Date Reported 4/18/84

TIME 9:00 a.m. - 12 noon

PLACE Room "C" S.O.B.

OTHER COMMITTEE REFERENCES:
(In order shown)

Transp.

Approp.

FINAL ACTION:

_____ Favorably with _____ amendments

X Favorably with Committee Substitute

_____ Unfavorably

OTHER: _____ Temporarily Passed

_____ Reconsidered

_____ Not Considered

THE VOTE WAS:

FINAL ROLL VOTE		SENATORS	Amend. #1		Amend. #2		Amend. #3					
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
		Beard										
		Crawford										
WITHOUT OBJECTION		Johnston	WITHOUT OBJECTION		WITHOUT OBJECTION		WITHOUT OBJECTION					
		Langley										
		Malchon										
		Plummer										
		Weinstein										
		Jenne										
		TOTAL										
	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay

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(Attach additional page if necessary)

Please Complete: The key sponsor appeared ( )
A Senator appeared ( )
Sponsor's aide appeared ( )
Other appearance ( )